**(2011) 10 MAD CK 0211**

**In the Madras High Court**

**Case No :** Writ Petition No. 22397 of 2008 and M.P. No. 1 of 2008

Indian Officers' Association APPELLANT

Vs

The Assistant Provident Fund Commissioner, Employee's Provident Fund Organization, Regional Office, Tamil Nadu Region, 37, Royapettah High Road, Chennai - 600014 RESPONDENT

**Date of Decision :** 18-10-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 16(2), 7A, 7B, 7I
Income Tax Act, 1961 — Section 12AA

**Citation :** (2011) 10 MAD CK 0211

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** Vijayakumari Natarajan for Mr. S. Natarajan, for the Appellant; K. Ramu, for the Respondent

**Final Decision :** Dismissed

## Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner is the registered society registered under the Tamil Nadu Societies Registration Act and the employees working in the State Government and the Central Government are its members. The Association claims that it has got exemption from the Income Tax Department. It has been recognised as a public charitable trust / society u/s 12AA of the Income Tax Act, 1961. u/s 16(2) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and by a notification No. S.O.2121, dated 4.7.2003, the Central Government had exempted the institutions which are run by public religious or charitable trusts or endowments or other public purposes. Since the petitioner is the charitable trust / society, they are entitled for exemption granted on 4.7.2003 and the said exemption has been extended from time to time and that it continued even till 31.3.2010 by a statutory notification in S.O.2368, dated 7.6.2005.

 

2. On the earlier occasion, when the respondent had demanded coverage of PF Act, they filed a writ petition before this court being W.P. No. 19538 of 2004. This court had allowed the writ petition and directed the respondent to reconsider the matter afresh after affording reasonable opportunity to the association. But, without considering the said direction and without considering the relevant materials, the respondent claimed that since the petitioner association had employed 21 persons, the Act will apply. Once again, the petitioner had filed a writ petition in W.P. No. 27693 of 2007. This court by an order dated 23.8.2007 had set aside the order by stating that it was a non speaking order and therefore, the respondent should once again reconsider the matter.

3. It is also claimed by the petitioner association that they are having 4 office staff and that the hostel employees are 8. There is one Project Staff and one blind instructor. Apart from that there are also 3 part time vessel cleaners. Some of them are aged more than 60 years. Hence without prejudice to the earlier submission, it is claimed that they are not employing 20 employees as claimed by the respondent. The allegation that they are engaging three more security guards was also denied. Therefore, when they passed an order dated 9.7.2008 directing them to comply with the provisions of the Act and the scheme, they filed the present writ petition.

4. The writ petition was admitted on 11.09.2008. Pending the writ petition, this court had granted an interim stay. On notice from this court, the respondent has entered appearance through counsel.

5. Heard the arguments of Mrs. Vijayakumari Natarajan, learned counsel appearing for the petitioner and Mr.K.Ramu, learned Standing Counsel for the PF Department.

6. The authority, i.e., the respondent had passed the present order purporting to exercise its power u/s 7A of the EPF Act. As to whether the petitioner is engaging 20 workers or below is essentially a question of fact and that fact will have to be established either before the authority while exercising power u/s 7A or by making a reference to the Regional Provident Fund Commissioner in terms of the PF Scheme or if any mistake is committed, by filing a review application before the same authority u/s 7B. In the absence of the petitioner failing in any one of the proceedings, a remedy has been given by way of an appeal u/s 7-I of the EPF Act to the Employees Provident Fund Appellate Tribunal. The petitioner cannot bye-pass that remedy and approach this court under Article 226 of the Constitution.

7. In the first writ petition moved by the petitioner association, it was allowed to be filed only on the ground that at that time the Tribunal was not having full complement and there was no Coram. In that W.P. No. 19538 of 2004, the petitioner did not claim any exemption as a public charitable trust as claimed now. The only ground was that they did not employ 20 and above workers. It is only in the second writ petition, i.e., W.P. No. 27693 of 2007, they had raised this

 

contention. In the affidavit filed in support of that writ petition, it was stated that one Eagle Security Agency is supplying security guards and that even including those contractors, the petitioner was not engaging above 20 employees. In that writ petition, this court did not direct the petitioner to avail the alternate remedy and that the only ground was that the respondent did not pass a speaking order. Pursuant to this direction, the respondent has passed a detailed order running into 11 pages. While rejecting the contentions about coverage, it was stated that neither the petitioner nor the security supplying agency had produced any records. The Enforcement Officer on an investigation found that there are as many as three security guards and that a statement was also recorded from one Suresh Babu. After this court directed to consider the objection, the petitioner association had engaged a counsel. A perusal of the impugned order showed that the question of exemption was never argued before the authority and that much of the efforts were spent only to establish that they are not engaging 20 or above 20 workers. Therefore, one cannot blame the authority for not dealing with the said issue. But, however, in this writ petition, once again the petitioner had raised the same issue and blamed the authorities for not considering their plea. If as per the direction of this court, the authorities are bound to consider a particular issue, then the petitioner through counsel should have argued the said matter. In the absence of the same, it cannot be said that the said issue was ever argued. Even otherwise, the exemption notification relied on by them has no relevance to the society established by the petitioner association. The exemption found u/s 16(2) applies to religious and charitable trust. The petitioner association is neither a religious body nor a charitable trust discharging any religious activities. It is an association of Government officers who are highly placed in the Government services. The exemption notification relied on by them will not apply to the petitioner association''s activities. As admitted by the counsel, they are running a huge shopping complex in the association premises and collecting rents from various shop keepers. When the authority had visited the place and made enquiry, they found that there are more than 20 workers. Hence this court cannot interfere with such findings of fact.

8. Mrs.Vijayakumari Natarajan, learned counsel placed reliance upon a judgment of the Supreme Court in State of H.P. and Others Vs. Gujarat Ambuja Cement Ltd. and Another, for contending that the writ petition is maintainable if under the statute, there is allegation of infringement of fundamental right or when on the undisputed facts, the taxing authorities are shown to have assumed jurisdiction which they did not possess.

9. In the present case, the question as to the number of employees engaged by them is a disputed fact. Insofar as the exemption notification is concerned, the matter was neither argued before the authority. Therefore, the court cannot presume that there was failure of decision making by the authority. In any event, the reliance placed upon the exemption granted u/s 16(2) has no relevance to the case on hand.

 

10. Hence, there is no case made out. Accordingly, the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.

 